

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x
JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457(EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W.
FEELY; POLICE OFFICER MATTHEW J. ROSIELLO;
POLICE OFFICER KENNETH L. ANDERSON; SERGEANT
WILLIAM A. DAIB; POLICE OFFICER SHANIEL J.
MITCHELL; and POLICE OFFICER STEPHEN J.
MINUCCI,

Defendants.

- - - - - x

VIDEOCONFERENCE VIA ZOOM
Conducted by:
LEX REPORTING SERVICE, INC.
160 Broadway
New York, New York

October 14, 2020
2:02 p.m.

DEPOSITION of CAPTAIN WILLIAM A. DIAB,
named herein as **SERGEANT WILLIAM A. DAIB**, a
Defendant in the above-entitled action, held
remotely via Zoom videoconference, pursuant to
Order, taken before Tania C. Pedrosa, a
shorthand reporter and Notary Public within and
for the State of New York.



REPORTING SERVICE, INC.

PROFESSIONAL REPORTING SINCE 1980

TOLL FREE 800.608.6085

LEX #159616-B

A p p e a r a n c e s :

THE ABOUSHI LAW FIRM, PLLC
Attorneys for Plaintiff
1441 Broadway, Fifth Floor
New York, New York 10018
BY: AYMEN A. ABOUSHI, ESQ.

JAMES E. JOHNSON, ESQ.
Corporation Counsel
Attorney for Defendants
100 Church Street
New York, New York 10007
BY: JOSHUA A. WEINER, ESQ.
FILE No.: 2017-066702

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the
form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer
authorized to administer an oath, with
the same force and effect as if signed
and sworn to before the Court.

THE REPORTER: This deposition is being conducted via Zoom videoconferencing. All parties present are appearing remotely and are confirming that they can hear and see through the video without any technical issues.

Would counsel and the witness please confirm.

MR. ABOUSHI: Confirmed.

MR. WEINER: Confirmed.

THE WITNESS: Yes.

THE REPORTER: Before I swear in the witness, I will ask counsel to stipulate on the record that due to the national emergency pandemic, the court reporter may swear in the deponent even though they are not in the physical presence of the deponent, and that there is no objection to that at this time, nor will there be an objection to

it at a future date.

MR. WEINER: Yes, confirmed.

MR. ABOUSHI: Confirmed.

THE REPORTER: And, Counsel,
can you represent that to the
best of your knowledge and
belief, the witness appearing
today via videoconference is
indeed, according to the caption,
Sergeant William A. Diab?

THE WITNESS: Yes.

MR. WEINER: Confirmed, yes.

W I L L I A M A . D I A B, the witness herein
via videoconference, having first been
duly sworn by a Notary Public of the
State of New York, was examined and
testified as follows:

EXAMINATION BY

MR. ABOUSHI:

Q State your name for the record,
please.

A Captain William A. Diab.

Q State your address for the
record, please.

1 W. A. Diab 71

2 patrol guide. Like I said, I think I was
3 studying for the test.

4 Q Okay. And do you remember what
5 your tour of duty was that day?

6 A I think it was 1715 to 0200.

7 Q So 7 o'clock to 2 o'clock?

8 A No. It was 1715 which is 5:00,
9 5 o'clock.

10 Q 5:00 p.m.?

11 A Yeah.

12 Q My military time is off.

13 A Yeah.

14 Q Okay. So you were on duty from
15 5:00 to 2:00 p.m. supervising both the
16 conditions team and --

17 A From 5:00 p.m. to 2:00 a.m.

18 Q 5:00 p.m. to 2:00 a.m. --

19 A Yeah.

20 Q -- on the day and night of the
21 incident --

22 A Yes.

23 Q -- supervising the conditions
24 team and anti-crime, correct?

25 A Yes.

1 W. A. Diab 75

2 Q You yourself didn't discharge
3 your weapon that night, correct?

4 A No, correct.

5 Q You did unholster it at some
6 point, correct?

7 A Say that again.

8 Q You did unholster your weapon at
9 some point that night, correct?

10 A Yes.

11 Q When you discharge your weapon,
12 is it accurate that the shell casing
13 discharges up and to the right?

14 MR. WEINER: Objection.

15 A Is it accurate --

16 Q You can answer.

17 A -- that it goes to the right? I
18 mean, it could go to the left, it could go
19 straight up, it could go straight down. I
20 mean, I guess in --

21 Q In your experience -- I'm sorry.
22 Go ahead.

23 A I guess in perfect science it's
24 supposed to, you know, eject out to the right
25 but it could go anywhere.

1 W. A. Diab 80

2 Q Everything turned out okay with
3 the ringing?

4 A Yes.

5 Q Okay. Now, you testified that
6 you were at your desk or in your office and
7 at some point you decided to leave the
8 precinct that day, correct?

9 A Yes.

10 Q Okay. Do you have your own
11 office at the precinct or do you share an
12 office or something else?

13 A No, we don't share an office.

14 Q Okay. So you were in there
15 studying for your exam. And what happens
16 next that causes you to leave the precinct?

17 A Officer Mitchell gets a call from
18 Police Officer Cespedes basically saying that
19 he -- the bouncer from a club -- some guy
20 working security at this club at 189 Bridge,
21 he says to him that the guy -- I guess he
22 frisked him and the guy has a gun and he's,
23 like, drunk. So he tells Cespedes -- about
24 to tell Cespedes that the guy's got a gun
25 right now. So he relays this info to

1 W. A. Diab 81

2 Mitchell and then -- Mitchell was actually in
3 the office while I was there. So he
4 basically relays me -- to me what Cespedes is
5 saying and then I talked to Cespedes real
6 quick and he -- he verifies -- confirms that
7 the guy has a gun right there and he's drunk
8 and he's acting crazy.

9 Q Okay. In terms of this bouncer,
10 are you familiar with what his name was?

11 A Yeah. He was actually an
12 auxiliary officer in our precinct, Marshall.

13 Q Okay. And prior to this date,
14 had you interacted with him?

15 A I would see him around but I
16 never really spoke to him, no.

17 Q Okay. And after this incident,
18 did you see him or speak to him?

19 A Yeah. I would say hello, yeah.

20 Q Okay. Did at some point in time
21 his employment with the NYPD cease?

22 A Yeah. I think he got us in
23 trouble or something.

24 Q I'm sorry. I didn't hear that.

25 A Yeah. I think he got into some

1 W. A. Diab 85

2 lieutenant or any captains from either the 77
3 or the 84?

4 A No.

5 Q Were you required to notify them
6 that this situation was occurring?

7 A Was I required to notify my
8 captain? I don't have to tell my captain. I
9 mean, I got the tip. It's -- you know, we
10 went to check it out. We went to go check it
11 out.

12 Q Okay. Now, after you had this
13 conversation with Officer Cespedes, what did
14 you do next?

15 A I told the other guys, basically
16 everyone, Feeley, Minucci, Rosiello,
17 Anderson, and Mitchell, and we basically did
18 a tactical plan on how we were going to
19 approach and we headed out there.

20 Q What was the tactical plan?

21 A How we were going to set up and
22 what we were going to do. I was going to
23 basically be the lead car and they were going
24 to trail.

25 Q And you came up with this

1 W. A. Diab 94

2 Q Okay.

3 A Yeah.

4 Q Okay. I got you.

5 All right. So Mr. Benbow and
6 Mr. Bradley exit the location and make a
7 right on Bridge Street towards Nassau; is
8 that correct?

9 A Yes.

10 Q Okay. And at this point you're
11 behind them, correct?

12 A Yes.

13 Q Okay. What happens next?

14 A So my vehicle trailed them. They
15 make the right onto Nassau and then we make
16 the right onto Nassau. At one point we're
17 right alongside them. And then we pull up a
18 little bit before them, a couple of feet, and
19 I exit. I have my gun drawn and I tell them
20 to get down on the floor. "Police. Get down
21 on the ground."

22 Q Okay. Now, where were Officers
23 Rosiello, Anderson, and Feeley at this point?

24 A They were behind me.

25 Q Okay. And what kind of car were

W. A. Diab

95

you in?

A I think I was in a Fusion,
unmarked Fusion.

Q Okay. And Rosiello, Feeley, and
Anderson, what kind of car were they in?

A I think they had a Crown
Victoria.

Q Okay. Were they in a marked or
unmarked car?

A Unmarked.

Q What color was your car?

A I think it was gray.

Q Okay. And what -- dark gray?
Light dray?

A I think it was, like, a light
gray.

Q Okay. And what color was their
vehicle?

A I think it was black.

Q Okay. Where were you sitting in
your vehicle?

A I was in the front passenger's
seat.

Q Who was driving?

1 W. A. Diab 96

2 A Mitchell.

3 Q And who was in the passenger --
4 who was in the back?

5 A Minucci.

6 Q Where in the back was he seated?

7 A I think he was, like, in the
8 middle.

9 Q Okay. So just to back up a bit,
10 you get to the location and you park, right?

11 A Yes.

12 Q And you're waiting. Then you see
13 these guys come out and you start following
14 them down the street onto -- where they make
15 a -- they make a right and -- onto -- out of
16 that location and make another right onto
17 Nassau and you're right behind them, correct?

18 A Yes.

19 Q At this point are you
20 communicating at all with anyone in the
21 vehicle?

22 A All right. So can I back --
23 backtrack a little bit?

24 Q It depends.

25 A Okay.

W. A. Diab

97

Q I just want to --

A They exit but we didn't -- we didn't verify that -- Mitchell was on the phone with Marshall saying they're about to exit and he's basically saying there's a taller guy and a shorter guy with a bag. So that's when they exited and then -- so we knew it was them. So it wasn't like -- you know. I just wanted to throw that out there.

Q Okay. And I appreciate your testimony.

So they go on Nassau -- they make a right onto Nassau and they're walking --

A Yes.

Q -- right?

You pull up, you said, next to them.

What -- what was your plan, if any? Did you -- did you have anything in mind in terms of driving next to them?

A My plan? I -- I was just going to get out and approach.

Q And do what?

A Stop --

W. A. Diab

98

Q Arrest them?

A I was going to stop them.

Q Okay. And so you jump out of the car and your -- your gun is drawn, correct?

A Yes.

Q What does Officer Minucci do?

A I don't know. My -- my focus was on these two individuals.

Q Okay. And what -- what did Officer Mitchell do?

A He stopped the car.

Q Okay. And did you jump out of the car before or after the car came to a stop?

A It came to a stop and I jumped out of the car.

Q Okay. Did you tell the officers in the car that you were about to do that?

A Yes. I was like, "I'm going to -- stop the car. I'm going to jump out."

Q Okay. And so you jump out of the car and you approached these two individuals, correct?

A Yes.

1 W. A. Diab 99

2 Q Okay. And you said you didn't
3 see what Officer Minucci was doing, correct?

4 A That's correct.

5 Q Okay. And you didn't see what
6 Officer Mitchell was doing; is that correct?

7 A That's correct.

8 Q Okay. Mr. Benbow at that point
9 turns in a 180 and runs in the opposite
10 direction, correct?

11 A Correct.

12 Q You're focused on Mr. Bradley
13 who's on the ground, correct?

14 A Correct.

15 Q Okay. You don't see what happens
16 after that; is that correct?

17 A That's correct.

18 Q Your attention is focused on
19 Mr. Bradley on the ground, correct?

20 A Yes.

21 Q And then you hear gunshots; is
22 that right?

23 A Yes.

24 Q At that point you didn't know who
25 was shooting, right?

1 W. A. Diab 102

2 guy -- to the location where I heard the --
3 the gunshots and --

4 Q Okay. Did you have your gun out
5 at that point?

6 A I think I was holstered at that
7 time.

8 Q Okay. And when you get to where
9 you heard the gunshots, what do you see?

10 A I see Mr. -- Mr. Benbow on the
11 ground. He's -- he's shot. And I see a
12 gun -- a silver gun in the street a couple of
13 feet away from him. And I see Rosiello and
14 Feeley are right over in that direction. And
15 then I --

16 Q Okay.

17 A -- I asked -- I could go on or
18 no?

19 MR. WEINER: You can go.

20 Finish your answer.

21 A I asked what happened and they
22 said, "We shot. He pulled out a gun. We --
23 we -- we shot."

24 Q Okay. Did Mr. Benbow ever point
25 a gun at you?